



COMMONWEALTH of VIRGINIA

CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

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November 30, 1998

Mr. Patrick Menichino
Environmental Division
James City County
P.O. Box 8784
Williamsburg, Virginia 23187

Dear Mr. Menichino:

In reference to the issues you raised about a recent buffer clearing situation in James City County, we have the following comments and regulatory interpretations:

Your section 23-9, Performance Standards:

1. Indigenous vegetation includes all of the vegetative levels (tree canopy, shrub level, ground cover) and when removed from the RPA components it is required to be replaced. Is replacement required when removal occurs from encroachment (violations), sight lines, vista, access paths, woodlot management, etc.?

While there is not an explicit definition of indigenous vegetation within the Chesapeake Bay Designation and Management Regulations, the Chesapeake Bay Local Assistance Department has held for some time that within the RPA, all trophic levels described in your comment are to be preserved in order to protect the functional integrity of the RPA. We believe that any land disturbance, vegetative modification, or structural encroachment into the RPA, whether permitted by ordinance or not, requires local review. Therefore, the Department expects that localities will have a role in determining the reasonableness of vegetative modifications associated with permitted activities like sight lines, vistas, and the like; and, that localities require replacement of vegetation when modifications exceed these agreed upon limits. Any violation should be required to replace vegetation that has been unlawfully removed.

2. Trees may be pruned to obtain sight lines and vista, but when removed they will be placed. What method of pruning is acceptable and at what point does pruning affect the efficacy of the buffer?

Any pruning method that can be considered an accepted arboricultural practice that does not compromise the health of the vegetation is acceptable.

3. Would you consider pruning vegetation to the stump (ground) with a chain saw acceptable?

While such a technique may leave the root mat intact, it surely will or, is intended to, compromise the health of the vegetation that has been pruned in such a manner. One of the important functions of the ground cover and understory, as a component of the RPA, is its ability to intercept sediments, to assimilate nutrients, and to reduce the energy of rainfall that leads to erosion. All of these functions are dependent on healthy top growth.

4. Pruning and removal of vegetation is only to be accomplished after approval from the appropriate governmental agency has been obtained. Replacement of the removed vegetation is required?

See answer provided in number 4 below.

Your Section 23 -1 0, Plan of Development

1. Where areas are to be preserved are encroached, should replacement of the vegetation include all of the vegetative levels and not just the canopy? Would it be generally acceptable to replace just the ground cover and eliminate the canopy and shrub level?

Maintaining all trophic levels within the RPA should be an important consideration when evaluating replanting requirements after a violation. The degree that each level should be replaced should be a function of the site in question: i.e. the nature of the modification and the amount of each trophic level removed. To maintain the functional integrity of the RPA, we do not believe that it is appropriate to remove one or more trophic levels without in-kind replacement.

2. What are the recommended replacement ratios for the shrub and ground cover levels?

A number of localities have adopted replacement ratios of 2 or 3 to 1 for every plant removed through a violation. The Department believes that such ratios are appropriate given that they are no less than 1 to 1 and do appear to have a deterrent effect. I have attached a copy of guidance on this matter issued by the Department in February of 1992. Depending on the nature of the disturbance on the particular site, several techniques could be used to determine the required

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replacement. Given that, I recommend that we discuss your particular site in greater detail after you've had a chance to evaluate the information in this letter.

3. Clearing plans are required to be prepared by a certified or design professional, are single families excluded from this requirement?

Whether individual homeowners are required to hire a qualified professional to develop these plans is largely at the discretion of the locality. However, in allowing individuals to submit simplified plans for this purpose, the locality must require sufficient information to enforce established clearing limitations. Therefore, the information should be to some relative scale, should indicate existing vegetation, and the areas to be modified. A replanting plan should be developed to address a violation and should include, the location of the new planting, the stocking rate and species type.

4. Vegetation removed from an RPA component as part of an approved clearing plan should be replaced?

When vegetative modifications are conducted as part of and in accordance with a permitted activity, and locally approved plan, the vegetation removed does not have to be replaced. However, when granting exceptions and variances, the Department does expect that some water quality mitigation be considered during the deliberations on the request.

I hope that this regulatory interpretation provides the necessary guidance for you to address the situation facing you. If the Department can be of further assistance, please call me or your liaison, David Kovacs, at 1-800-243-7229.

Scott Kudlas
Chief of Local Program Evaluation and Planning
Assistance

cc: Policy Log
David Kovacs
Michael Clower

